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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

VALENTINO POLANI,

Defendant and Appellant.

C070253

(Super. Ct. No. 08F07808)

Defendant Valentino Polani appeals his conviction for possession of a firearm by a felon. He contends the court abused its discretion in denying his *Romero*<sup>1</sup> motion to dismiss a prior strike conviction because he should have been deemed outside the spirit of the three strikes law. Defendant also contends, and the People agree, the abstract of judgment incorrectly shows his sentence to be three years instead of 32 months.

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<sup>1</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

We affirm but direct the trial court to correct the abstract of judgment to accurately reflect defendant's sentence.

#### FACTUAL AND PROCEDURAL BACKGROUND

##### A

##### *Prior Strike Conviction*

On March 10, 1989, defendant was convicted of assault with a firearm in violation of Penal Code section 245, subdivision (a)(2), a strike under the three strikes law (Pen. Code, §§ 667, 1192.7, subd. (c)(8)). In that case, defendant went to his ex-girlfriend's work location with a .357-caliber revolver because he was angry at her for not wanting to "get back with him." There, he threatened to "kill her" and "blow her head off." The court sentenced him to four years in prison.

##### B

##### *Conviction On Appeal*

On September 22, 2008, officers from the Sacramento County Sheriff's Violence Suppression and Narcotics Investigation Division executed a search warrant for defendant's residence, vehicle, and person. During a search of the vehicle, the officers found \$900 in the center console. Defendant surrendered his house keys to the officers and told them he had a marijuana plant in his backyard and a loaded handgun between the mattresses of his bed. Defendant also gave the officers the combination to a safe in his bedroom and told them he had "a couple pounds" of marijuana stored inside.

The officers then searched defendant's house. Outside, they found a marijuana plant. They also found a Smith & Wesson

.357-caliber revolver with six live rounds under the mattress of defendant's bed. Inside defendant's safe, the officers found 1,698.5 grams of marijuana, packaging, and a triple-beam scale. Officers noticed the carpet in defendant's closet had been cut. After further inspection, the officers found another safe under the floor. Inside that safe they found \$34,000 in cash.

Defendant told the officers that he was bipolar and suffered from epilepsy, and the marijuana was for personal use to help with his conditions. He also told them the heat sealer they found was for packaging fruits and vegetables and the money was part of his 401k that he had just cashed. Further, he told officers that he had bought the handgun from an unidentified person in 1991 and used it for personal protection.

Defendant was charged with possession of marijuana for sale, cultivation of marijuana, and possession of a firearm by a felon. Pursuant to a negotiated plea, defendant pled no contest to the firearm charge. Thereafter, the marijuana charges were dismissed. Defendant admitted his prior strike conviction.

Defendant then made a *Romero* motion to strike his previous strike. The trial court reviewed letters from defendant's neighbors and peers, as well as heard testimony from several of defendant's neighbors and from defendant himself. After a lengthy explanation, the trial court denied the *Romero* motion and sentenced defendant to 32 months in prison.

## DISCUSSION

### I

#### *The Trial Court Properly Denied The Romero Motion*

Defendant contends the trial court abused its discretion when it denied his *Romero* motion because he "simply is as far away as can be imagined from the sort of person the public had in mind in adopting the Three Strikes law."

In *Romero* our Supreme Court held that trial courts have the discretion under Penal Code section 1385 to dismiss prior conviction allegations or findings in the furtherance of justice. But that discretion "is limited. Its exercise must proceed in strict compliance with section 1385(a), and is subject to review for abuse." (*Romero, supra*, 13 Cal.4th at p. 530.) In determining whether to dismiss a prior conviction allegation or finding, the court must consider "whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

While the trial court has the power to dismiss a strike conviction (*Romero, supra*, 13 Cal.4th at pp. 529-530), an appellate court will not disturb the trial court's ruling denying defendant's request to dismiss his strike conviction

absent an affirmative showing of an abuse of discretion.

(*People v. Gillispie* (1997) 60 Cal.App.4th 429, 434-435.)

Applying that standard here, we find no abuse of discretion. Defendant argues that his prior conviction was almost 20 years before the present case and did not involve any actual violence. But the fact that a conviction is 20 years old does not mean it should be ignored. "In determining whether a prior conviction is remote, the trial court should not simply consult the Gregorian calendar with blinders on." (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.) Here, defendant admitted that he obtained a firearm in 1991, which was less than one year after he was released on parole. Therefore, defendant "has not led a 'legally blameless life' since [his] prior [conviction]." (*Ibid.*) Also, the trial court considered the timing of the prior conviction and determined it a "midpoint in a washout under *Romero*."

Further, defendant's characterization of his prior conviction as not involving any actual violence is misleading. Defendant's threats to kill while displaying a firearm, while not directly leading to violence, cannot be characterized as nonviolent in any way.

Defendant also contends that his outstanding reputation among the people who knew him places him outside of the spirit of the three strikes law. However, defendant's neighbors may not have known about his prior conviction when they formed their opinions, or that he had a loaded firearm, large amounts of marijuana, packaging materials, and a triple beam scale in his

bedroom. Had they known this, defendant's outstanding reputation may have been diminished.

Further, even though the trial court assumed for the purposes of sentencing that defendant used marijuana to help with his medical condition, the trial court also determined that defendant likely possessed marijuana for sale as well. This was a reasonable inference. Not only did defendant possess large quantities of marijuana, he also had in his possession scales, safes, and a huge amount of cash. It was also reasonable for the trial court to infer that defendant possessed the gun in his home in connection with the sale of marijuana, considering the need for protection when engaging in the sale of drugs.

The trial court gave a detailed explanation of its reasoning for its decision. On one hand, the court considered the remoteness of defendant's prior conviction, the lack of arrests since his discharge from parole, and the outstanding reputation defendant had among several of his peers. On the other hand, the court considered the seriousness of the prior offense, the fact that the prior offense involved a firearm, and the fact that the current offense involved the illegal possession of a firearm likely in connection with the sale of marijuana. The trial court carefully considered all of the facts of this case before rendering its sentence. It is our job to determine if the trial court abused its discretion. It did not.

II

*The Abstract Of Judgment Must Be Corrected*

Defendant contends the abstract of judgment incorrectly shows his sentence to be three years with credit for time served of zero days. Defendant is correct. The trial court actually sentenced him to 32 months in prison, with 18 days credit for time served. The abstract of judgment must be adjusted to correct this error.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to accurately reflect defendant's sentence and custody credits and to forward a copy of the corrected abstract to the Department of Corrections and Rehabilitation.

\_\_\_\_\_, ROBIE, Acting P. J.

We concur:

\_\_\_\_\_, MAURO, J.

\_\_\_\_\_, DUARTE, J.